

## **Summary of 09-26-12 interview of Phil Jenkins**

Interview and summary by Thomas M. Patton, Deputy Attorney General

Since January 2012, Phil Jenkins has been acting deputy director of the Off-Highway Vehicle (OHV) Division of the Department of Parks and Recreation. Beginning in 2005, Jenkins served seven years under former OHV deputy director Daphne Greene in the number two OHV position, informally referred to as division chief. Jenkins previously served the Department as a ranger, ranger supervisor, and maintenance supervisor. (Phil Jenkins transcript (PJtr), pp. 2-3.)

Jenkins advised he had never heard anything about disparities in financial balance reports to the State Controller's Office (SCO) versus the Department of Finance (DOF) concerning the State Park & Recreation Fund (SPRF). Jenkins did recall regular discussions about holding back and not allocating all appropriated monies in order to keep an emergency reserve in case bad weather or other factors resulted in reduced visitor revenues. (PJtr, p. 4-5.) However, Jenkins stated he had never heard of any undisclosed reserve funds in either the SPRF or OHV accounts that were invisible and outside the officially-appropriated budget. (PJtr, p. 6.)

Jenkins was shown the DOF's spreadsheet<sup>1</sup> which indicates that for years some \$20 million or more in SPRF monies that were disclosed in annual cash balance reports to the SCO had not been disclosed in annual budget documents submitted to the DOF. Jenkins stated that he had not seen the figures but they did not surprise him. Instead, they fit a pattern of leadership being hesitant to admit there was money in the SPRF because such admission would likely result in a reduction of the Department's general fund allocation. (PJtr, pp. 9-11.)

Specifically, Jenkins recalled discussions where the idea of saving or generating more SPRF monies through creativity and increased efficiency was rejected based on concern the DOF would simply take away any such funds. Jenkins described it as wariness about showing the ability to create additional revenue for fear such creativity would hurt the agency. (PJtr, pp. 9-11.) Jenkins clarified that he was not suggesting the Department was unaware of the need to generate fee revenue, and noted that fees are indeed a major portion of the Department's funding.

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<sup>1</sup> The DOF spreadsheet shown to Jenkins is attached hereto as Exhibit A.

His point was that the incentive to find creative ways of generating money was lacking, as such efforts could often result in a loss of general funding levels. (PJtr, pp. 12-13.)

The DOF's spreadsheet and figures regarding the OHV were then reviewed. It was noted that for fiscal year ending June 30, 2011, the OHV fund condition balance reported to DOF was \$33,492,000 less than the cash balance reported to the SCO. The numbers, however, show an opposite result for fiscal year ending June 30, 2010, when over \$20 million *more* was reported in the fund condition balance to DOF than in the cash balance report to the SCO. This interviewer and Jenkins then observed that the reported balances going back to the mid-nineties were all over the map. In some years (2003, 2004, 2005, and 2008) the balances reported to the DOF and SCO were very close; in other years the balance disparity was in the tens of millions. And in four of those disparate years (2002, 2006, 2007, and 2010) anywhere from \$20,580,000 to 34,582,000 *more* had been reported in the fund condition balance to DOF than in the cash balance report to the SCO. Jenkins commented that the numbers defied all logic. (PJtr, pp. 15-17.)

Jenkins then explained that a number of occurrences could have caused significant discrepancies and swings in the budget versus cash balances being reported. One such event was a "gas tax swap" that Jenkins indicated took place during the 2010-11 legislative cycle. Jenkins recalled that OHV administrative chief Maria Mowery advised Jenkins in 2011 that OHV was receiving excessive funds from the motor vehicle fuel accounts each month. Jenkins explained that OHV then contacted Caltrans and learned that the gasoline sales and excise taxes had been "swapped." The OHV fund receives a percentage of the excise tax, and the tax "swap" reduced sales tax while increasing excise tax, essentially doubling the tax monies going to the OHV fund. The Legislature later corrected what Jenkins described as an error, as the extra excise tax was not intended to result in additional tax revenue to the OHV fund. Jenkins noted some eight other entities were affected by the "tax swap," and subsequent legislation required those additional tax monies be returned. (PJtr, pp. 19-22.)

Jenkins observed that this "tax swap" event would obviously cause a significant increase in the cash balance reported to the SCO, and a reported cash balance that far exceeded the balance prediction reflected in the annual budget. Indeed, it was observed that the DOF balance spreadsheet shows a reported SCO cash balance for fiscal year ending June 30, 2011, of \$165,043,000, which was \$45,170,000 more than the cash balance of \$119,873,000 reported at

as of June 30, 2010. Jenkins stated that the errant tax credit resulted in some \$55 million more being directed to the OHV fund than intended or anticipated. Jenkins also noted that the start of the tax swap and increased tax credit to the OHV fund may not have coincided with the start of the fiscal year, which could explain why the cash balance report for June 30, 2011, reflected a \$45 million jump in revenues rather than the full \$55 million. (PJtr, pp. 23-25.)

Next, Jenkins advised that the OHV division carefully monitored monthly revenue trends, which fluctuate with the price and amount of gasoline sold, but OHV does not see the numbers being reported from the Parks Department to the SCO or the DOF. Jenkins opined that the idea behind establishing an OHV trust fund was to separate the Parks Department and OHV funding streams, but that OHV was never very successful at seeing and tracking all the OHV monies being processed through the Department's administrative services division. (PJtr, pp. 30-31.)

Jenkins observed that the OHV division distributes grant monies to local entities for items such as restoration projects, and such grants totaled \$21 million in 2011, and \$27.1 million in 2010. Jenkins stated that sometimes a recipient may have trouble obtaining approval for a project, and some or all of the grant monies may then revert. Jenkins assumed such fund reversions are reflected in the prior-year adjustment section of the OHV budget, but noted that the OHV division was not able to clearly see where and when reversions were posted since that work was done by the Department's administrative services division. (PJtr, pp. 34-35.)

Jenkins also noted that funds for land acquisition may be approved and appropriated, but an acquisition might ultimately not proceed and the money would revert. Jenkins recalled one such abandoned project was a proposed acquisition in Bakersfield for over \$20 million, and another involved a \$20 to \$30 million dollar acquisition in Riverside. Jenkins noted there was a current, \$32 million dollar project, called the Onyx Ranch Acquisition in Kern County. Jenkins stated that he mentioned that project to the Department's administrative services division and was informed it had been accounted for and was not part of the \$33,492,000 disparity reflected in the balance reports for fiscal year ending in June 30, 2011. (PJtr, pp. 35-36, 39.)

Jenkins next recalled that there had been several loans to the general fund of OHV funds in the amounts of \$90 million, \$22 million, and \$21 million. Jenkins also noted that over \$10 million was annually directed to the administrative services division for what he understood was compensation for OHV's share of administrative costs. (PJtr, pp. 40-41, 45-46, 63.)

Jenkins stated that the loans would cause him to be baffled each year when looking at January's budget documents. He understood the \$90 million loan took the OHV fund balance to zero, but the following year he saw a new balance of \$20 million. Jenkins stated this was followed by another \$20 million loan, but \$42 million in OHV reserves were later reflected at the end of the last budget cycle. Jenkins stated he wondered how this was possible, and noted that his experience was consistent with the significantly fluctuating numbers reflected in the fund balance spreadsheet, all of which Jenkins considers to be a very odd thing which ultimately Jenkins says he does not understand. (PJtr, pp. 47-48.)

Jenkins stated that he discussed these issues with the former deputy director of administrative services, Manuel Lopez, who never fully explained what was occurring and ultimately told Jenkins: "It's just way too complicated." Jenkins stated that his rudimentary understanding was that OHV fund recharges in the millions of dollars could be due either to monetary reversions or bookkeeping that might take two years or more to catch up. Jenkins stated that he understood how to track reversions and expenditures, and the main point of confusion concerned prior year adjustments and OHV's inability to understand where reverted funds would go. (PJtr., pp. 49, 51-52, 54.)

Lastly, Jenkins recounted that the OHV division proposed that it track its own funds and Manuel Lopez disagreed and said it would not be efficient to have both the OHV and the administrative services divisions doing the same thing. Jenkins stated that former Director Coleman also spoke with Daphne Greene and advised Greene that she did not think it was an appropriate thing to pursue. Jenkins recalled that the OHV division had prepared a draft strategic plan which was amended to take out the recommendation that OHV be responsible for tracking its own dollars. The interview concluded with Jenkins noting that both he and Daphne Greene shared the goal of increasing transparency, and that they had started sharing more of the budget numbers with the community and the OHV commission. (PJtr, pp. 58-61.)